

Noisy venues risk threat of closure

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An escalating dispute that could force Mayfair's historic Curzon cinema to close puts fresh focus on the difficulties raised where new development takes place near noisy established venues.

Long leaseholder 38 Curzon is converting office space above the cinema into luxury flats, but is seeking to make Curzon pay a £500,000 bill for soundproofing work to protect the development from noise from films shown there.

Curzon says it cannot afford to pay, and could not obtain planning approval for carrying out the work to its listed cinema. The dispute may end in legal action for forfeiture of Curzon's lease. Meanwhile, a petition aimed at saving the cinema has been signed by thousands.

With growing pressure to find sites for residential development, particularly in London, such disputes are likely to arise

QUESTIONS TO ASK BEFORE DEVELOPING NEAR A BUSY, NOISY VENUE

- What is the disturbance now? Is it frequent, annual or in between?
- Will that disturbance cause the intended occupiers any concerns?
- If it might, consider whether there are any restrictions on the venue operating which have not been adhered to and should be
- Consider how long the venue has been operating the way it has. Does it have actual or implicit "authority" to carry on operating that way?
If the venue is operating lawfully and will be able to carry on that way, design your scheme to cater for it, and for your expected occupiers, and engage with the venue to see whether changes can be made which might help both parties.

more frequently as residential conversions take place near the city's many cinemas, bars, theatres and other venues.

Jason Hunter, property litigation partner at Russell-Cooke, said: "The law accepts that we have to put up with a certain amount of disturbance in our lives, especially in a busy city like London and from building works. But there is a line. The problem is knowing where that line is, and when it has been crossed.

"Noise disturbance can amount to what is known as a 'nuisance' and unreasonable sound can give rise to a claim to stop it, or control it."

In granting planning permission for the redevelopment work near Curzon, Westminster City Council imposed a condition that sought to protect the future use of the cinema from complaints by residents by making the developer responsible for installing adequate soundproofing. It is now investigating.

CASE STUDY: MINISTRY OF SOUND

The Ministry of Sound was involved in a similar row in 2013, when former London mayor Boris Johnson had to use his planning powers to progress the redevelopment of Eileen House, SE1, where Oakmayne planned a 41-storey tower but 50,000

people objected on the grounds that the club's 24-hour licence could be jeopardised by future noise complaints.

Oakmayne and the MoS reached a noise-mitigation compromise. Jason Hunter said: "Even though someone buys

property near a venue known to make noise, that does not prevent them making a claim in nuisance. But if the venue has been operating that way for a long time, it might be that it has acquired a legal right to make that amount of noise."

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